IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18001 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHBHAI SHANTILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 18001 of 2003

MR AJ PATEL for Petitioner No. 1

Mr. Sood, AGP for Respondent No. 1

..... for Respondent No. 2

MR YOGESH S TRIVEDI for Respondent No. 2/1-6

DS AFF.NOT FILED (R) for Respondent No. 2/1-6

RULE NOT RECD BACK for Respondent No. 7

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 21/07/2004

ORAL JUDGEMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the

legality and validity of the judgment and order dated 10.10.2003 passed by the Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad in Revision Application No. 1 of 1998 in dismissing the same and confirming the order passed by the Collector, Ahmedabad, dated 10.12.1997, in cancelling the Entries No. 5857 and 5858.

2. The petitioner purchased lands bearing Survey No. 755/2, 753/2, 763/2 and 763/1 situate at Village Sola, Taluka City, District Ahmedabad by registered Sale Deed dated 25.11.1994. Similarly, the land bearing No. 770 also came to be purchased by the petitioner by registered Sale Deed dated 25.11.1994. The aforesaid lands came to be purchased by the petitioner by registered Sale Deed executed by the respondent No.7 in his capacity as power of attorney holder of respondents No. 2 to 6. On the basis of the aforesaid sale deed mutation entries No. 5857 and 5858 came to be effected on 22.12.1994. Before the aforesaid entries came to be certified, the Talati-cum-Mantri received some objections and therefore he forwarded the Chapter to the Mamlatdar, Dascroi for appropriate orders and proceedings were registered as Disputed Cases No. 26 and 27 of 1995. The Mamlatdar, Dascroi directed that both the aforesaid mutation entries be cancelled as the petitioner has failed to produce any evidence to show that he was an agriculturist on the date of purchase of the land in question.

3. In the meanwhile since the concerned respondents tried to interfere with the possession of the lands purchased by the petitioner the petitioner had filed Regular Civil Suit No. 904 of 1994 in the Court of learned Civil Judge (SD), Ahmedabad (Rural) at Mirzapur, for a declaration and permanent injunction in respect of the lands mentioned hereinabove in which application Exh.5 for an interim injunction restraining the concerned respondents from in any manner interfering with possession of the suit lands is also filed and the ex-parte ad-interim injunction granted initially has become final and Exhibit 5 application was allowed. Thereafter, being aggrieved and dissatisfied with the order passed by the Mamlatdar, Dascroi in cancelling the entries No. 5857 and 5858 the petitioner preferred appeals before the Deputy Collector being RTS Appeals No. 130/95 and 131/95. The Deputy Collector, Viramgam Prant, Ahmedabad by his judgment and order dated 13th January 1997 allowed both the appeals and quashed and set aside the order passed by the Mamlatdar, Dascroi and directed that mutation entries No. 5857 and 5858 be certified. The respondents herein preferred revision application

before the Collector, Ahmedabad, challenging the order passed by the Deputy Collector dated 13th January 1997 in RTS Appeals No. 130/95 and 131/95. The Collector, Ahmedabad, by his judgment and order dated 10.12.1997 partly allowed the Revision Application No. 35 of 1997 and remanded the matter to the Deputy Collector for a fresh decision. Being aggrieved and dissatisfied with the judgment and order passed by the Collector, Ahmedabad, dated 10.12.1997 the petitioner preferred Revision Application No. 1 of 1998 before the State Government, i.e., Secretary, Revenue Department (Appeals), Government of Gujarat. In the meantime, mutation Entry No. 6402 came to be effected in respect of aforesaid lands purchased by the petitioner by two separate sale deeds and the said mutation entry also came to be certified by the Mamlatdar, Dascroi on 11.4.1997.

4. Thereafter, the aforesaid Revision Application No. 1/1998 came to be heard, decided and disposed of by the revisional authority, i.e., Joint Secretary to the Government of Gujarat, Revenue Department (Appeals), Ahmedabad, who vide judgment and order dated 10.10.2003/14.11.2003 dismissed the said revision application and confirmed the order passed by the Collector, Ahmedabad dated 10.12.1997.

5. Being aggrieved and dissatisfied with the judgment and order passed by the revisional authority dated 10.10.2003/14.11.2003 in revision application No. 1/1998 in dismissing the same and confirming the order passed by the Collector, Ahmedabad dated 10.12.1997 the petitioner , original-purchaser has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

6. Shri AJ Patel, learned advocate appearing on behalf of the petitioner , has submitted that the judgment and orders passed by the Mamlatdar, Collector and the revisional authority are bad in law as though the aforesaid authorities have not properly appreciated the fact that the entries could not have been cancelled when a suit is pending in a Civil Court. He has further submitted that the aforesaid authorities have erred in cancelling the entries on the ground that the petitioner has not produced any evidence to show that on the date on which the petitioner purchased the land he was an agriculturist. He has further submitted that in view of the judgment of this Court in the case of Evergreen Apartment Cooperative Housing Society VS. Special Secretary, REvenue Department, Gujarat STate, reported in 1991(1) GLR Page 113 and in the case of L.R.s of Popat

Khima Ramani and Ors. vs. Collector, Rajkot and Ors., reported in 2003(1) G.L.H. 30, the Revenue authorities were not justified in cancelling the entries on the ground that there is breach of provision of other laws. He has further submitted that at the most the Revenue authorities could have passed the entries which were in favour of the petitioners which could have been subject to the ultimate outcome of the civil suit pending between the parties. He has therefore requested to allow the present Special Civil Application and restore the Entries No. 5857 and 5858.

7. Shri Yogesh Trivedi, ld. advocate appears on behalf of respondents No. 2/1 to 2/6. Shri Sood, ld. AGP appears on behalf of the State Government. They have submitted that the judgment and order passed by all the authorities quashing and setting aside the entries No. 5857 and 5858 are just and proper and in accordance with law. They have submitted that the sale deed which was executed in favour of the petitioner is illegal. He has further submitted that respondent No.7 was not given any power of attorney to sell the land in question and therefore no title will be passed in favour of the petitioner and therefore requested to dismiss the present Special Civil Application confirming the order passed by the revisional authority as well as Collector by holding that the entries No. 5857 and 5858 are rightly quashed and set aside.

8. Heard the learned advocates for the parties. The petitioner has purchased the land in question by registered sale deed. Therefore necessary entries are required to be made on the basis of the aforesaid sale deeds. Mutation entries are made only for fiscal purposes for the purpose of collecting revenue. The revenue authorities while effecting the entry and exercising powers under Rule 108 are not required to go into the validity of title of the land in question. They are also not required to go into validity of the transaction. The revenue authorities are also not required to consider whether by mutating the entry and/or by the aforesaid transaction there will be any breach of provisions of any other law or not. It will be ultimately for the appropriate authority to initiate proceedings for breach of provisions of a particular law. However, the revenue authorities while conducting RTS proceedings have no jurisdiction and/or authority to consider whether there is breach of provision of any other law or not. As held by this Court in the case of Evergreen Apartment Cooperative Housing Society VS. Special Secretary, REvenue Department, Gujarat STate, and

in the case of L.R.s of Popat Khima Ramani and Ors. vs. Collector, Rajkot and Ors., (Supra), the revenue authorities have no jurisdiction to decide the question of title, validity of transaction and breach of any other provision of law. Under the circumstances, setting aside of entries No. 5857 and 5858 on the ground that the petitioner has not produced any evidence to show whether he was an agriculturist or not on the date on which the land was purchased is absolutely irrelevant and the said order is illegal and beyond the scope and ambit of the revenue jurisdiction while deciding the RTS proceedings. It is also pertinent to note that civil suits are pending between the parties and any decision of revenue authorities is always subject to the ultimate outcome of the civil suits between the parties. Therefore as and when the civil proceedings are finalised the order passed by the Civil Court si to be respected and necessary entries are required to be made/changed on the basis of the outcome of the proceedings before the Civil Court. In view of the aforesaid facts and circumstances of the case and considering the judgment of this Court as stated hereinabove, the orders passed by the revisional authority, the Collector, as well as the Mamlatdar in quashing and setting aside the entries No. 5857 and 5858 are required to be quashed and set aside and accordingly the same are quashed and set aside. The entries No. 5857 and 5858 are ordered to be restored. However, it is observed and directed that the said entries will be subject to ultimate outcome of the civil litigations/civil suits pending between the parties. It is also further observed that restoration of the entries No. 5857 and 5858 would not mean that this Court has considered the validity of the transaction between the parties. The appropriate authorities are not precluded from initiating proceedings in accordance with law if there is any breach of provision of any other law inclusive of consideration of the question whether the petitioner was an agriculturist or not on the relevant date, i.e., the date on which the petitioner purchased the land. With these observations and directions, the present Special Civil Application is allowed. Rule is made absolute accordingly to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.